

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**THE REPUBLIC OF IRAQ, including as
PARENS PATRIAE on behalf of the
CITIZENS of the REPUBLIC OF IRAQ,**

Plaintiff,

- against -

ABB AG et al.,

Defendants.

08-CV-05951 (SHS)

ECF CASE

ORAL ARGUMENT REQUESTED

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
FIRST NOTICE OF SUPPLEMENTAL AUTHORITY**

DEFENDANTS JOINING IN REPLY

ABB AG	F. Hoffmann-La Roche Ltd.
ABB Electric Sanayi AS	Flowserve B.V.
ABB France SAS (successor in interest to ABB Automation SAS and to ABB Industrie Champagne by way of its merger into ABB Automation SAS)	Flowserve Corporation
ABB Industrie AC Machines (now ABB Industrie AG/ABB Schweiz AG)	Flowserve Pompes S.A.S.
ABB Near East Trading Limited	Glaxo Wellcome Export Ltd.
ABB Solyvent-Ventec	Glaxo Wellcome SA (South Africa) (PRY) Ltd.
ABG Allgemeine Baumaschinen Gesellschaft MbH	GlaxoSmithKline Egypt SAE
Aesculap AG and KG	GlaxoSmithKline Walls House
Aesculap Motrics S.A.	Ingersoll-Rand Italiana S.p.A.
Aesculap Surgical Instruments SDN BHD	Ingersoll-Rand World Trade Ltd.
AGCO Danmark A/S (erroneously named as AGCO Denmark A/S)	Intervet International B.V.
AGCO S.A.	Janssen Pharmaceutical
Air Liquide Engineering	Kia Motors Corporation (erroneously named as "Kia Motors")
Akzo Nobel N.V.	Liebherr Export AG
Astra Zeneca AB	Liebherr France, SA
Atlas Copco Airpower N.V.	Merial SAS
Atlas Copco CMT Sweden AB	N.V. Organon
AWB Limited	Novo Nordisk A/S
B. Braun Medical Industries SDN BHD	Oscar S. Wyatt, Jr.
B. Braun Medical S.A.S.	OSRAM Middle East FZE
B. Braun Melsungen A.G.	Railtech International SA
BNP Paribas Hong Kong	Renault Agriculture & Sonalika International
BNP Paribas London Branch	Renault Trucks SAS (f/k/a Renault V.I.)
BNP Paribas Paris	Roche Diagnostics GmbH
BNP Paribas (Suisse) SA	Rohm and Haas France, S.A.
BNP Paribas UK Holdings Limited	Secalt S.A.
BNP Paribas USA	Serono Pharma International
Boston Scientific SA	Siemens S.A.S. France (erroneously named as Siemens S.A.A. of France)
Buhler Ltd.	Siemens Sanayi ve Ticaret A.Ş. (erroneously named as Siemens Sanayi ve Ticaret A.S. of Turkey)
CG Holdings Belgium N.V. (f/k/a Pauwels International N.V.)	SmithKline Beecham International
CILAG AG International	Solar Turbines Europe, S.A.
Clyde Union, S.A.S. (f/k/a/ Union Pumps, S.A.S.)	Sulzer Pumpen Deutschland, GMBH
Daewoo International Corp	Sulzer Turbo Ltd.
David B. Chalmers, Jr.	Textron, Inc.
David Brown Transmissions France, S.A.S	The Weir Group PLC
Doosan Benelux SA, as successor to Ingersoll-Rand Benelux, N.V.	Thermo King Ireland Ltd.
Dow AgroSciences LLC	Valtra do Brasil Ltda. (erroneously named as Valtra do Brazil)
Dow AgroSciences S.A.S.	Vitol, S.A.
El Paso Corporation	Volvo Construction Equipment AB (as successor to Volvo Construction Equipment International)
Eli Lilly Export SA	Woodhouse International, LLC
Evapco Europe S.R.L.	York Airconditioning & Refrigeration FZE

The Republic of Iraq's "Notice of Supplemental Authority" directs the Court to factual arguments that are neither "supplemental" nor "authority." There is nothing new here. Iraq made the same erroneous arguments a year ago in its opposition to the Defendants' motion to dismiss. *See* Dkt. No. 393 at 56. And Iraq cites no new or intervening legal authority that would justify a "Notice of Supplemental Authority" on the issue of the supposed domestic application of RICO and other laws. Nor, for that matter, does Iraq's latest submission on the supposed domestic application of laws have any impact on the other fundamental, dispositive jurisdictional and justiciability issues pointed out by the Defendants in the original motion to dismiss briefing. *See* Dkt. No. 356 at 12-50; Dkt. No. 425 at 2-30. Rather, Iraq's brief is merely a misguided attempt to inject new factual allegations in a "Sur-Reply" to the Defendants' Fifth Notice of Supplemental Authority while improperly calling it a "Notice of Supplemental Authority."

Moreover, Iraq's filing confirms that the RICO claim in the First Amended Complaint ("FAC") should be dismissed under *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010). Iraq has apparently abandoned its reliance on *European Community v. RJR Nabisco, Inc.*, Civ. No. 02-CV-5771, 2011 WL 843957 (E.D.N.Y. Mar. 8, 2011), despite having just invoked that case in an effort to salvage the FAC's RICO claim, *see* Dkt. No. 473 at 2-3. Notably, although the Defendants pointed out that the FAC itself underscores that the "brains" of any purported RICO enterprise were not domestic—citing 177 paragraphs of the FAC, *see* Dkt. No. 475 at 4-5—Iraq's most recent brief fails to include a single cite to the FAC, laying bare the fundamental disconnect between Iraq's current assertions and the operative complaint.

In any event, Iraq's attempt to save its claim by casting itself as an enforcer of U.S. criminal laws in U.S. courts is fatally flawed. Iraq is a private litigant bringing civil RICO claims. Pleas or deferred prosecution agreements in other matters do not answer the question

whether Iraq has plausibly alleged a domestic RICO enterprise as required under *Morrison* and its progeny. Indeed, Iraq's focus on alleged acts that supposedly occurred in, or had an effect in, the United States, is merely an attempt to resurrect the "conduct" and "effects" tests that *Morrison* squarely rejected. Buried in Iraq's brief is the conclusory, implausible refrain that the collection of international commitments that comprised the U.N. Oil-for-Food Program itself is the RICO enterprise in question. *See* Dkt. No. 476 at 8 (citing *First Capital Asset Mgmt., Inc. v. Satinwood, Inc.*, 385 F.3d 159, 178 (2d Cir. 2004) (holding that plaintiffs had "barely" alleged defendants participated in a RICO enterprise)). *Satinwood* (hardly a new decision) not only fails to support the domestic nature of Iraq's alleged enterprise, but actually confirms that (1) members of a RICO enterprise must have a "common purpose to engage in a particular fraudulent course of conduct and work together to achieve such purposes," *see Satinwood*, 385 F.3d at 174 (citation & quotation omitted), and (2) the Defendants "must have had some part in directing the enterprise's affairs," *see id.* at 176 (citation, quotation, and alteration in original omitted). *See* Dkt. No. 356 at 61-65; Dkt No. 425 at 32-35; Dkt. No. 475 at 2. Certain Defendants' plea agreements supposedly showing fraud on the Program hardly supports the notion that *any* Defendants *directed* the Program, or that *all* the Defendants and the Program shared either a common purpose or the cooperation characteristic of an "enterprise."

The only support for the claim that the U.N. Oil-for-Food Program is a RICO enterprise is Iraq's conclusory assertion that "[t]he Defendants played an integral role in the Program[]'s operations," *see* Dkt. No. 476 at 8, coupled with a plea that the Court supply Iraq with a "low hurdle" to clear, *see id.* (quoting *Satinwood*, 385 F.3d at 176). Iraq's RICO claim trips over even a low hurdle. It should be dismissed accordingly.

Respectfully submitted,

Dated: May 2, 2011

/s/ Brant W. Bishop, P.C.

Thomas D. Yannucci, P.C.
Brant W. Bishop, P.C.
John R. Bolton
Robert B. Gilmore
KIRKLAND & ELLIS LLP
655 Fifteenth Street, NW
Suite 1200
Washington, DC 20005
(202) 879-5000
thomas.yannucci@kirkland.com
brant.bishop@kirkland.com
john.bolton@kirkland.com
robert.gilmore@kirkland.com

*Counsel for Siemens S.A.S. France,
Siemens Sanayi ve Ticaret A.Ş., and
OSRAM Middle East FZE*

*And, by permission, on behalf of all joining
defendants*

CERTIFICATE OF SERVICE

I, Brant W. Bishop, P.C., hereby certify that I caused a true and correct copy of the foregoing DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST NOTICE OF SUPPLEMENTAL AUTHORITY to be served via ECF upon all counsel of record registered through the Court's ECF system.

On this 2nd day of May, 2011.

/s/ Brant W. Bishop, P.C.
Brant W. Bishop, P.C.
*Counsel for Siemens S.A.S. France,
Siemens Sanayi ve Ticaret A.Ş., and
OSRAM Middle East FZE*